

MERRIMACK COUNTY STATE OF NEW HAMPSHIRE SUPERIOR COURT

Docket No. 00-C-_____

PAULA T. ROGERS,
as Liquidator of Tufts
Health Plan of New England, Inc.

v.

**TUFTS HEALTH PLAN OF NEW
ENGLAND, INC.,**
and
TUFTS ASSOCIATED HEALTH PLANS, INC.,
and
**TUFTS ASSOCIATED HEALTH
MAINTENANCE ORGANIZATION, INC.,**
and
TAHMO HOLDINGS, INC.
and
TUFTS BENEFIT ADMINISTRATORS, INC.
and
INDIVIDUALS NAMED ON EXHIBIT A HERETO

WRIT OF SUMMONS

The Plaintiff Paula T. Rogers, the statutory Liquidator of the estate of Tufts Health Plan of New England, Inc., (hereinafter, the "Plaintiff" or the "Liquidator") brings this action for damages and other equitable relief. For her Complaint, the Liquidator alleges as follows:

I.

INTRODUCTION

1. This is an action against Tufts Health Plan of New England, Inc. ("TNE"), its parent or affiliated organizations, Tufts Associated Health Plans, Inc. ("TAHP"), Tufts Associated Health Maintenance Organization, Inc. ("TAHMO"),

TAHMO Holdings, Inc. ("Holdings"), Tufts Benefit Administrators, Inc. ("TBA"), and the members of the Boards of Directors of TNE, TAHP and TAHMO, who directed the activities of the corporate Defendants to the substantial detriment and damage of TNE and its creditors, policyholders and members. This action is brought pursuant to the Liquidator's authority under R.S.A. 402-C:25 and pursuant to the authority granted under the Order of Liquidation entered on January 3, 2000 by the Merrimack County Superior Court in the main Liquidation Proceeding entitled In the Matter of the Liquidation of Tufts Health Plan of New England, Inc., Docket No. 99-E-410, on behalf of the Estate of TNE and its creditors, policyholders, and members. The damages and equitable remedies sought by the Liquidator, as set forth below, are assets of TNE and its Estate.

II.

PARTIES

2. The Plaintiff is the duly appointed Liquidator of TNE, pursuant to an Order of the Merrimack County Superior Court dated January 3, 2000, and holds all of the powers specified in 402-C:25 I through XXII, including but not limited to the exclusive authority to prosecute and institute in the name of TNE or as Liquidator any legal proceedings in behalf of the creditors, members, or policyholders of TNE.

3. The Defendant TAHP is a corporation organized pursuant to the laws of the State of Delaware, with its principal place of business at 333 Wyman Street, Waltham, Massachusetts 02154. The Defendant TAHP is licensed in the

State of New Hampshire under R.S.A. 420-E as a medical utilization review entity.

TAHP is the sole corporate member and controlling owner of the Defendant TAHMO. Upon information and belief and as set forth below, TAHP and its Board of Directors dominated and controlled all of the material activities and basic policies of TNE, such that TNE was the mere instrumentality and alter ego of TAHP and its Board of Directors.

4. The Defendant TAHMO is a corporation organized pursuant to the laws of the Commonwealth of Massachusetts, with its principal place of business at 333 Wyman Street, Waltham, Massachusetts 02154. TAHMO is the 100% shareholder of the Defendant Holdings, which is the 100% stockholder of TNE. Upon information and belief and as set forth below, together with TAHP and the TAHP Board of Directors, TAHMO and its Board of Directors dominated and controlled all of the material activities and basic policies of Holdings and TNE, such that TNE was the mere instrumentality and alter ego of both TAHP and TAHMO.

5. The Defendant Holdings is a corporation organized pursuant to the laws of the State of Delaware with its principal place of business at 333 Wyman Street, Waltham, Massachusetts 02154. Holdings is the 100% shareholder of the Defendant TNE. Holdings is a holding company established solely to consolidate the for-profit subsidiaries of TAHMO (the Defendants TNE and TBA) for tax purposes. Ultimate control over TNE always remained with TAHMO. Upon information and belief and as set forth below, TAHP, TAHMO and Holdings and the TAHP and TAHMO Boards of Directors as set forth below, dominated and

controlled all of the material activities and basic policies of TNE, such that TNE was the mere instrumentality and alter ego of its parents and affiliated organizations and their respective Boards of Directors.

6. The Defendant TNE is a corporation organized pursuant to the laws of the State of New Hampshire, with its principal place of business 333 Wyman Street, Waltham, Massachusetts 02154, and an office located at 15 Constitution Drive, Bedford, New Hampshire 03301. Prior to its liquidation, the Defendant TNE had no employees in its own right. TNE's officers have consistently been officers of TAHMO. Its directors have consistently been directors of TAHMO and/or TAHP.

7. The Defendant TBA is a for-profit corporation organized pursuant to the laws of the Commonwealth of Massachusetts with its principal place of business at 333 Wyman Street, Waltham, Massachusetts 02154. The Defendant TBA is a third party administrator for the Tufts Health Plans and like TNE is ultimately controlled by TAHMO.

8. (a) The Defendant Dr. Harris A. Berman is an individual resident of the Commonwealth of Massachusetts, and is a Director of the Defendants TAHP, TAHMO, Holdings and TNE. Dr. Berman is also the President and Chief Executive Officer of TAHP; the Chairman and Chief Executive Officer of TAHMO; and the Chairman and Chief Executive Officer of Holdings.

(b) The Defendant Nancy L. Leaming is an individual resident of the Commonwealth of Massachusetts, and is a Director and Officer of TAHP, TAHMO and TNE.

(c) The Defendant Richard Hallworth is an individual resident of the Commonwealth of Massachusetts. Hallworth is, along with Berman and Leaming, a member of the Board of Directors of TNE, and is the Chief Financial Officer of TAHP and TAHMO.

(d) The Defendant Davey Scoon is an individual resident of the Commonwealth of Massachusetts. Along with Dr. Berman, Ms. Leaming and Mr. Hallworth, Mr. Scoon is a member of the Board of Directors of TNE, TAHP and TAHMO. Dr. Berman, Ms. Leaming, Mr. Hallworth and Mr. Scoon (hereinafter, “the TNE Directors”) together comprise the entire TNE Board of Directors as of the date that the Order of Liquidation was entered.

(e) The remaining “Director Defendants” set forth in Exhibit A hereto, which is incorporated by reference herein, are the members of the Boards of Directors of TAHP and TAHMO, with the residences and citizenship as set forth in Exhibit A.

(f) Upon information and belief, the TNE Directors, and the other Director Defendants as members of the TAHP and/or TAHMO Boards of Directors, directed the material activities and basic policies of TAHP, TAHMO, Holdings and TNE, such that the TNE Directors and the Director Defendants treated TNE as their instrumentality and agent without regard for its corporate separateness and identity.

II.

JURISDICTION AND VENUE

9. Venue in this Court is proper pursuant to R.S.A. 402-C:4 (IV), which provides that “no court of this state shall have jurisdiction to entertain, hear or determine any complaint praying for the...liquidation...of any insurer...or other relief...relating to such proceedings,” and R.S.A. 507:9, because the Liquidator is located within Merrimack County, and has the statutory authority to liquidate, wind-up and marshal the assets of TNE under R.S.A. 402-C:25 et seq.

10. This Court has personal jurisdiction over the Defendants pursuant to R.S.A. 402-C:4 (V) because they have generally transacted business, committed tortious acts and entered into contracts in the State of New Hampshire, and purposefully availed themselves, through the acts of subsidiaries and their own conduct, of the privilege of conducting business in the State of New Hampshire. This Court has personal jurisdiction over the Defendants TAHP, TAHMO and Holdings based upon their consent to this Court’s jurisdiction, as well as their common ownership and direction of the activities and policies of TNE, and by virtue of the common membership of their respective Boards of Directors, their common ownership of and investment in TNE, and persistent under-capitalization of TNE throughout its existence as a health maintenance organization.

11. This Court has personal jurisdiction over the TNE Directors and the Director Defendants based on their positions as Directors and Officers of TNE, TAHP and TAHMO, their direction and control of the acts and policies of and with

respect to TNE as members of the TNE, TAHP and TAHMO Boards of Directors, or as officers of TNE, TAHP and TAHMO, and based upon their tortious conduct having an effect on citizens of New Hampshire.

III.

FACTS COMMON TO ALL COUNTS

A. The Relationship of TAHP, TAHMO, Holdings and TNE, and TAHP's, TAHMO's and Holdings' Domination and Control of TNE

12. The Defendants TAHP, TAHMO, Holdings, TBA and TNE are or were part of a family of companies ultimately owned and controlled by TAHP, a for-profit holding company. "Tufts Health Plan" is the corporate brand name that refers to the group of companies operating under the management and direction of TAHP and TAHMO and their Boards of Directors, offering a full array of healthcare and managed care services for employer groups and individuals.

13. Through its direction of the acts and business policies of its subsidiaries and affiliates, TAHP and TAHMO provide health insurance plans that provide a defined set of benefits for a fixed monthly premium payment, and places certain restrictions on the choice of healthcare providers available to members and employer group subscribers enrolled in the specific "Tufts Health Plan." The Defendants TAHMO and TNE are health maintenance organizations ("HMOs") operated by and under the direction of TAHP, its Board of Directors and its Chairman, Dr. Berman, and others.

14. On or about January 31, 1995, TAHP and TAHMO, acting jointly through their Boards of Directors and at the direction of, inter alia, Dr. Berman,

caused TNE to be incorporated in the State of New Hampshire. The initial TNE Board of Directors consisted of, inter alia, Dr. Berman, Ms. Leaming and Mr. Hallworth. Both Dr. Berman and Ms. Leaming were at all relevant times also Directors and Officers of the Defendants TAHP, TAHMO and Holdings, and Mr. Hallworth was the Chief Financial Officer of TNE, TAHP and TAHMO.

15. The Defendant TNE was organized, incorporated, financed, managed and administered by TAHP and TAHMO to engage in the HMO business in the States of New Hampshire, Maine and Rhode Island. The Defendants TAHP and TAHMO caused TNE to be incorporated with the understanding that TAHP and TAHMO would provide funding for the purposes of maintaining the capitalization and operations of TNE, and on an ongoing basis represented that TAHP and TAHMO would provide the funding necessary to maintain TNE as a going concern that could and would meet its financial and contractual obligations. For example, and without limitation, Mr. Hallworth represented to the New Hampshire Department of Insurance on or about November 18, 1998, that TAHMO and TAHP would continue to fund and capitalize TNE and that TAHMO's cash and investments totaled over \$206,000,000.

16. The Defendant TNE consistently held itself out as a provider of a full range of HMO and related plans and services to employer group subscribers and individuals in New Hampshire, Maine and Rhode Island. TNE was capitalized by, as promised and represented, initial and periodic cash contributions made by TAHMO, at the direction of TAHP and TAHMO and their Boards of Directors acting jointly. However, upon information and belief, TNE was consistently under-

capitalized in relation to its actual ongoing business, its substantial premium deficiencies and its substantial underwriting and operating losses.

B. The Management and Services Agreements Imposed on TNE

17. On or about February 15, 1995, TAHP and TAHMO, at the direction of their Boards of Directors, acting jointly, and with the assistance of the TNE Directors, caused TNE to enter into a certain Management Agreement with TAHP, and a certain Services Agreement with TAHMO. Under these Agreements and pursuant to their domination, control and direction of TNE, the TAHP and TAHMO Boards of Directors, TAHP and TAHMO managed, administered, dominated and controlled all of the basic functions, policies, finances and business operations of TNE. As a result, TNE had no existence independent of TAHP and TAHMO.

18. Under these Agreements and pursuant to their domination, control and direction of TNE, and the TAHP and TAHMO Boards of Directors, TAHP and TAHMO possessed an unequal and superior leverage over TNE, forcing it to repose in TAHP and TAHMO and their Boards of Directors complete confidence in and reliance on them in the management and operation of TNE, such that TAHP and TAHMO acted in a fiduciary capacity with respect to TNE and, at a time when the TNE Directors and the Director Defendants knew of the financial distress and probable insolvency of TNE, its creditors.

19. The Services Agreement was executed on behalf of TAHMO by Dr. Berman and on behalf of TNE by Ms. Leaming – both of whom were at the time Directors and Officers of TAHP, TAHMO and TNE. On occasion, Dr. Berman

thereafter executed Amendments to the Services Agreement relating to the fees to be paid to TAHMO by TNE on behalf of both TAHMO and TNE, without regard for his separate and distinct fiduciary responsibilities to each of TAHMO and TNE.

20. Under the Services Agreement between TAHMO and TNE, TAHMO agreed, for a substantial annual fee imposed upon TNE and established by TAHMO and TAHP and their Boards of Directors, to provide comprehensive administrative services on TNE's behalf, including but not limited to clerical services, member enrollment, claims processing and administration, premium billing, collection of accounts and the provision of personnel to operate the business of TNE. Under the Services Agreement, TAHMO also agreed to assist in the administration of TNE to ensure that TNE was developed and operated on a sound financial basis; to provide reports to the TNE Board of Directors, as the TNE Board of Directors should reasonably from time to time request; and to indemnify TNE for any negligent or intentionally wrongful acts or omissions arising out of or in connection with TAHMO's provision of services under the Services Agreement.

21. Upon information and belief, the fees charged by TAHMO from time to time, at the direction of the TAHP and TAHMO Boards of Directors, were excessive in relation to the ongoing losses and premium deficiencies being experienced by TNE. TAHMO received from TNE fees for administrative services under the Services Agreement amounting to \$3,755,000 and \$717,000 in 1998 and 1997, respectively. These fees constituted amounts well in excess of the reasonable value of any such services rendered. Notwithstanding the

excessiveness of the fees charged, TAHP and TAHMO and the Director Defendants so dominated the business and operations of TNE that TNE had no separate mind or identity of its own, but simply did or allowed to be done whatever acts and entered into whatever contractual arrangements for administrative services that TAHP and TAHMO directed.

22. The Management Agreement was executed on behalf of TAHP by Dr. Berman and on behalf of TNE by Ms. Leaming – both of whom were at the time Directors and Officers of TAHP, TAHMO and TNE. On occasion, Dr. Berman thereafter executed Amendments to the Management Agreement relating to the fees to be paid to TAHP by TNE on behalf of both TAHP and TNE, without regard for his separate and distinct fiduciary responsibilities to each of TAHP and TNE.

23. Under the Management Agreement, TAHP agreed, for a substantial annual fee imposed upon TNE and established by TAHP and the TAHP and TAHMO Boards of Directors, to provide comprehensive management services on TNE's behalf, including the "management, administrative and marketing services that are reasonably necessary for TNE's financial stability, [and] TNE's competent and efficient operations;" making application for licenses and permits "required in connection with the management and operation of TNE;" negotiating and entering into "agreements with employer groups to provide for the provision of medical, hospital and administrative services to individuals who enroll in TNE;" providing "underwriting services, including the rating and underwriting of accounts;"

establishing a “Management Information System (‘MIS’) appropriate for the management of TNE’s operations;” and myriad other management services.

24. TAHP also agreed to manage TNE to ensure that TNE was developed and operated on a sound financial basis; to provide reports to the TNE Board of Directors, as the TNE Board of Directors shall reasonably request, and to indemnify TNE for any negligent or intentionally wrongful acts or omissions arising out of or in connection with TAHP’s provision of services under the Management Agreement.

25. Upon information and belief, TNE, in its own right or through its Board of Directors, never countermanded a decision or “recommendation” of TAHP as Manager under the Agreement. Instead, during the years of its operations, TNE was so dominated and controlled by TAHP in respect to TNE’s fundamental management, financial and operational policies that TNE had no separate mind or identity of its own, but simply did or allowed to be done whatever acts and entered into whatever contractual arrangements for management and other services that TAHP and TAHMO directed.

26. Upon information and belief, the fees charged by TAHP from time to time, at the direction of the TAHP and TAHMO Boards of Directors, were excessive in relation to the ongoing losses and premium deficiencies being experienced by TNE. TAHP received from TNE fees for management services under the Management Agreement amounting to \$14,051,000 and \$8,256,000 in 1998 and 1997, respectively. Notwithstanding the excessiveness of the fees charged in relation to the ongoing losses and premium deficiencies being

experienced by TNE, TAHP and TAHMO and the Director Defendants so dominated the business and operations of TNE that TNE had no separate mind or identity of its own, but simply did whatever acts and entered into whatever contractual arrangements for administrative services that TAHP and TAHMO directed.

C. TNE's Business Operations in New Hampshire, Maine and Rhode Island

27. TNE engaged in business with employer groups, subscribers, health care providers and others in the States of New Hampshire, Maine and Rhode Island, and in particular entered into contracts to provide managed care health plan options to employers in New Hampshire, Maine and Rhode Island. Throughout the years of TNE's operations, TAHP, TAHMO, and the Director Defendants dominated and controlled all of the material and basic functions of TNE, including but not limited to establishing the types of healthcare plans to be offered by TNE and the fees and premiums to be charged by TNE; the identification and use of healthcare providers and the financial arrangements entered into ostensibly on behalf of TNE with providers and providers networks; the identification of and contractual arrangements with employer groups and subscribers for TNE HMO and other healthcare services; and the capitalization of TNE in relation to its financial condition, premium expectations and deficiencies, and claims experience on an ongoing basis.

28. During the period when TAHP and TAHMO were causing TNE to be licensed to do business in the State of Rhode Island, Rhode Island regulators required that TAHMO provide its guaranty, in the form of funds in the amount of

\$1,280,000 to be deposited in a special, restricted account in the State of Rhode Island (“the Special Deposit”). According to the Certificates of Deposit for the account, the Special Deposit was held “for the benefit and protection of Rhode Island enrollees, subscribers, claimants and/or providers.” Despite the fact that TNE never had access to or the use of the Special Deposit at any time during its years of operations, TAHP and TAHMO caused, and the TNE Directors allowed, an amount equal to the Special Deposit to be recorded as capital in TNE’s financial books and records. TAHP, TAHMO, and the TNE Directors thereby caused TNE to negligently or knowingly mislead its creditors and other interested persons as to the actual capital contributions made by TAHMO, the overall capitalization of TNE, the extent of funds actually available to TNE on an ongoing basis, and the creditworthiness of TNE in relation to its liabilities and premium deficiencies.

29. In addition to misleading creditors, employers, subscribers, providers and others with respect to the creditworthiness and capitalization of TNE, TNE, under the direction and control of TAHP, TAHMO, the TNE Directors and the Director Defendants, knowingly or negligently established or permitted the establishment of premium rates for employers and subscribers that were below the anticipated expenses of TNE. On an ongoing basis, TNE, TAHP, TAHMO, the TNE Directors and the Director Defendants understood and expected, or should have understood and expected, that claims and other liabilities incurred by TNE were far greater than premium amounts received by TNE. Upon information and belief, TNE, at the direction and under the control of TAHP and TAHMO and the

Director Defendants, established employer and subscriber premium rates at below market rates in an effort to gain market share for the overall “Tufts Health Plan” organization in the New Hampshire, Maine and Rhode Island markets and thereby to benefit TAHP and TAHMO at the expense of TNE’s creditors.

30. For example, in June 1997, TNE, with TAHP’s and TAHMO’s knowledge, submitted a bid to Bath Iron Works Corporation (“BIW”) for the provision of group benefit medical coverage that was lower than any competing bid and provided for guaranteed cost limitations throughout the four year term of the proposed agreement. Upon information and belief, TNE’s BIW bid was based upon a waiver of all administrative costs for the proposed BIW healthcare plan, despite the fact that TNE was paying TAHMO substantial fees under the Services Agreement for the provision of such administrative services, and upon a calculation of plan implementation costs that was far below a reasonable operational basis.

31. TAHP and TAHMO and their Boards of Directors had actual knowledge of TNE’s substantial premium deficiencies and underwriting and operating losses realized as a result of, inter alia, TNE’s efforts, at the direction and control of TAHP and TAHMO and their Boards of Directors, to gain market share by offering its products and services at below market and below cost rates. Nonetheless, TAHP and TAHMO agreed to, and represented that TAHMO would continue to, fund the business of TNE despite TNE’s substantial losses.

32. For the year ending December 31, 1997, TNE lost approximately \$17,600,000. For the year ending December 31, 1998, TNE lost approximately

\$36,600,000, partly as a result of rate-setting policies and practices and the substantial underwriting and operating losses incurred thereby. Nonetheless, TNE, acting through and at the direction and control of TAHP and TAHMO, the TNE Directors, Director Defendants, negligently elected not to establish a premium deficiency reserve despite the probability that claims and other liabilities would exceed premiums collected. Upon information and belief, the decision not to establish a premium deficiency reserve was based upon a negligent and erroneous analysis of premiums, claims and maintenance costs by line of business conducted by TNE, at the direction and under the control of TAHP and TAHMO, which envisioned a net surplus in excess of \$1,000,000 for the combined TNE lines of business.

D. TNE's Failure and the Damages Caused By its Failure

33. Through October 31, 1999, however, TNE's financial results indicated a net loss of approximately \$47,400,000. In or about November, 1999, TAHP and TAHMO subsequently determined to cease making the previously promised necessary capital contributions to TNE, and thereby left TNE in a grossly undercapitalized state and necessarily unable to continue to conduct business in the ordinary course, resulting in the breach of all or nearly all of TNE's ongoing contracts with employers, subscribers, providers and others.

34. On November 22, 1999, TNE was placed in Rehabilitation pursuant to R.S.A. 402-C. On December 20, 1999, the Commissioner of the New Hampshire Department of Insurance brought a Petition for the Liquidation of TNE

pursuant to R.S.A. 402-C, and an Order of Liquidation was entered by the Merrimack County Superior Court on January 3, 2000.

35. The failure of TNE has resulted in damages far exceeding the minimum jurisdictional requirements of the Court, including without limitation damages resulting from the termination and breach of TNE contracts of insurance for the provision of health care and medical benefits; the cost to employers such as BIW and others of replacement coverages; the shortfall in payments owed and owing to medical providers; the substantial costs associated with the administration of the insolvent Estate of TNE and other foreseeable and consequential costs and damages.

COUNT I

(NEGLIGENCE BY TAHMO)

36. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 35 as if fully set forth herein.

37. In TAHMO's creation and performance of the Services Agreement between it and TNE, TAHMO had a duty to use reasonable care in structuring and performing the duties, both express and implied, set forth in the Agreement, including without limitation taking such action as a reasonably prudent person and contracting party would take to develop and operate TNE on a financially sound basis.

38. TAHMO breached its duty of reasonable care to TNE by, without limitation, failing to take adequate and reasonable steps to operate TNE under the

Services Agreement on a sound financial basis and otherwise in a reasonable manner.

39. As a direct and proximate result of TAHMO's breach of its duty of reasonable care, TNE was damaged, and has suffered and continues to suffer substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT II

(BREACH OF CONTRACT BY TAHMO)

40. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 39 as if fully set forth herein.

41. Under the Services Agreement with TNE, TAHMO in exchange for substantial compensation, undertook to operate and develop the business of TNE on a financially sound basis by, without limitation, providing adequate and reasonable oversight of TNE operations, member enrollment, claims processing and administration, premium billing and collection of accounts due and owing from employer groups and subscribers, and providing other services and support to TNE to manage TNE on a financially sound basis.

42. Upon information and belief, TAHMO materially breached its obligations, both express and implied, under the Services Agreement by, among other things, failing to operate and develop the business of TNE on a financially sound basis.

43. As a direct and proximate result of the breach of the Services Agreement by TAHMO, TNE has suffered substantial damages in an amount in excess of the jurisdictional limits of this Court.

COUNT III

(NEGLIGENCE BY TAHP)

44. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

45. In TAHP's creation and performance of the Management Agreement between it and TNE, TAHP had a duty to use reasonable care in structuring and performing the duties, express and implied, set forth in the Agreement, including without limitation taking such action as a reasonably prudent person and contracting party would take to develop and operate TNE on a financially sound basis.

46. TAHP breached its duty of reasonable care to TNE by, without limitation, failing to take adequate and reasonable steps to operate and manage TNE under the Management Agreement on a sound financial basis and otherwise in a reasonable manner.

47. As a direct and proximate result of TAHP's breach of its duty of reasonable care, TNE was damaged, and has suffered and continues to suffer substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT IV

(BREACH OF CONTRACT BY TAHP)

48. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 47 as if fully set forth herein.

49. Under the Management Agreement with TNE, TAHP, in exchange for substantial compensation, undertook to manage, operate and develop the business of TNE on a financially sound basis, by, without limitation, providing adequate and reasonable oversight and management of TNE operations, and provide other management services and support to TNE to manage TNE on a financially sound basis.

50. Upon information and belief, TAHP materially breached its obligations, both express and implied, under the Management Agreement, by among other things failing to operate and develop the business of TNE on a financially sound basis.

51. As a direct and proximate result of the breach of the Management Agreement by TAHP, TNE has suffered substantial and continues to suffer damages in an amount in excess of the jurisdictional limits of this Court.

COUNT V

(NEGLIGENCE BY TNE)

52. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 51 as if fully set forth herein.

53. In TNE's performance of the services under its Group Health Plans, TNE had a duty to use reasonable care in the carrying out and performance of its

duties, including without limitation taking such action as a reasonably prudent person would take to operate TNE and deliver services to employer groups and subscribers on a financially sound basis.

54. TNE breached its duty of reasonable care to various employer groups, subscribers and providers by, without limitation, failing to take adequate and reasonable steps to operate TNE in a manner reasonably calculated to ensure its ability to perform the contracts entered into by TNE, including by its deliberate decisions to set premium rates at levels that caused TNE to incur substantial underwriting and operating losses and made TNE no longer a viable health maintenance organization.

55. As a direct and proximate result of TNE's breach of its duty of reasonable care, the Liquidator, as the representative of the various employer groups and subscribers, was damaged, and has suffered and continues to suffer, substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT VI

(NEGLIGENT MISREPRESENTATION BY TNE)

56. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 55 as if fully set forth herein.

57. The Defendant TNE was at all times engaged in the business of providing health care insurance and medical benefits to employer groups, subscribers and policyholders, and represented and held itself out to those

employer groups, subscribers and policyholders as a financially sound provider of those services and benefits.

58. The employer groups, subscribers and policyholders, in whose name the Liquidator now brings this action, reasonably relied to their detriment on the representations of the Defendant TNE as to its financial condition, the soundness of its financial position, and its ability to perform the services for which it contracted.

59. The Defendant TNE was at all times engaged in the business of developing and operating networks of healthcare providers, and represented and held itself out to its network of healthcare providers as a financially sound provider of health care services and medical benefits.

60. The network providers of health care services and medical benefits, in whose name the Liquidator now brings this action, reasonably relied to their detriment on the representations of the Defendant TNE as to its financial condition, the soundness of its financial position, and its ability to perform the services for which it contracted.

61. The Defendant TNE owed a duty to exercise reasonable care in the negotiating, entering into, and performing its contracts and undertakings with employer groups, subscribers, policyholders and network providers.

62. The Defendant breached its duty of reasonable care and negligently misrepresented its financial condition, the soundness of its financial position, and its ability to perform the services for which it contracted to the aforementioned employer groups, subscribers, policyholders, and network providers of health care

services and medical benefits, by without limitation setting premium rates at levels that did not permit TNE to remain a viable business enterprise.

63. The Defendant TNE's failure to adhere to the duty to exercise reasonable care and its negligent misrepresentation were a direct and proximate cause of substantial economic loss, which the Liquidator and the parties in whose name the Liquidator brings this action have suffered and continue to suffer.

COUNT VII

(BREACH OF FIDUCIARY DUTY BY TAHP, TAHMO AND HOLDINGS, AND THE DIRECTOR DEFENDANTS; CORPORATE TRUST FUND DOCTRINE)

64. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 63 as if fully set forth herein.

65. As the parent organizations and controlling shareholders of TNE, TAHP, TAHMO and Holdings had, in view of their actual knowledge of the financial distress and probable insolvency of TNE, a fiduciary duty to TNE and its creditors to direct the activities of TNE with due care, in good faith, and with undivided loyalty. As Directors and Officers of TAHP and TAHMO, the Director Defendants had, in view of their actual knowledge of the financial distress and probable insolvency of TNE, a fiduciary duty to direct the activities of TNE with due care, in good faith, and with undivided loyalty.

66. TAHP, TAHMO, Holdings and the Director Defendants breached their fiduciary duty of care to TNE and its creditors by, at a time when the Defendants had actual knowledge of the financial distress and potential insolvency of TNE, causing TNE to enter into Management and Services Agreements at

excessive rates of compensation, resulting in the waste of substantial TNE corporate funds.

67. TAHP, TAHMO, Holdings and the Director Defendants breached their fiduciary duties of care and loyalty to TNE and its creditors by, at a time when the Defendants had actual knowledge of the financial distress and potential insolvency of TNE, causing TNE to enter into and continue Management and Services Agreements that enured solely and grossly to the benefit of TAHP and TAHMO, and by causing TNE not to establish a premium deficiency reserve.

68. As a direct and proximate result of TAHP's, TAHMO's, Holdings' and the Director Defendants' breach of their fiduciary duties of care and loyalty, the Liquidator, as the representative of TNE and the various employer groups, subscribers and providers, was damaged, and has suffered and continues to suffer, substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT VIII

(BREACH OF FIDUCIARY DUTY BY TAHP AND TAHMO)

69. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 68 as if fully set forth herein.

70. When the Management and Services Agreements, and the various Amendments thereto, were imposed upon TNE by TAHP and TAHMO, TNE was wholly dependent upon TAHP and TAHMO. By virtue of the special trust and confidence reposed in TAHP and TAHMO by TNE pursuant to the Management

Agreement and the Services Agreement and through TAHP's and TAHMO's course of conduct and control with respect to the affairs, business and operations of TNE, TAHP and TAHMO had a fiduciary duty to act with respect to the business of TNE, and to direct the activities of TNE, with due care, in good faith, and with undivided loyalty.

71. TAHP and TAHMO breached their fiduciary duty of care to TNE and its creditors by, at a time when the Defendants had actual knowledge of the financial distress and probable insolvency of TNE, charging TNE excessive fees under the Management and Services Agreements, resulting in the waste of substantial TNE corporate funds.

72. TAHP and TAHMO breached their fiduciary duties of care and loyalty to TNE and its creditors by, at a time when the Defendants had actual knowledge of the financial distress and potential insolvency of TNE, causing TNE to enter into and continue Management and Services Agreements that enured solely and grossly to the benefit of TAHP and TAHMO, and by causing TNE not to establish a premium deficiency reserve.

73. TAHP and TAHMO breached their fiduciary duties of care and loyalty to TNE and its creditors by, at a time when the Defendants had actual knowledge of the financial distress and probable insolvency of TNE, failing to continue as promised and represented to provide TNE with the financial support necessary for TNE's performance of its financial and contractual obligations.

74. As a direct and proximate result of TAHP's and TAHMO's breach of their fiduciary duties of care and loyalty, the Liquidator, as the representative of

TNE and the various employer groups, subscribers and providers, was damaged, and has suffered and continues to suffer, substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT IX

(BREACH OF FIDUCIARY DUTY BY THE TNE DIRECTORS; CORPORATE TRUST FUND DOCTRINE)

75. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 74 as if fully set forth herein.

76. As Directors and Officers of TNE, the TNE Directors owed TNE and, in view of their actual knowledge of the financial distress of TNE and its probable insolvency, its creditors, a fiduciary duty of good faith, due care and undivided loyalty.

77. As Directors and Officers of TAHP and TAHMO, and as Directors and Officers of TNE, with actual knowledge of the financial position and financial distress of TNE and its probable insolvency, the TNE Directors placed themselves in an intractable conflict of interest with the interests of TNE and its creditors, including its employer groups and subscribers, providers and other creditors.

78. The TNE Directors breached their fiduciary duty of care by permitting TNE to transfer substantial amounts of TNE funds to the Defendants TAHMO and TAHP pursuant to Management and Services Agreements at a time when the TNE Directors had actual knowledge of the financial condition and distress of TNE and its probable insolvency.

79. The TNE Directors breached their fiduciary duties of care and loyalty as Directors and Officers of TNE by permitting TAHMO to fail to make an appropriate capital contribution in respect to the Rhode Island Special Deposit and instead allow providers, creditors and other interested persons to be misled as to the financial soundness and status of TNE.

80. The TNE Directors breached their fiduciary duty of loyalty by permitting TNE to transfer substantial amounts of TNE funds to the Defendants TAHMO and TAHP pursuant to Management and Services Agreements at a time when the TNE Directors had actual knowledge of the financial condition and distress of TNE and its probable insolvency. The TNE Directors breached their fiduciary duty of care by setting TNE premium rates, or allowing TNE premium rates to be set, at rates too low to meet and support current and expected expenses, claims and liabilities.

81. As a direct and proximate result of the TNE Directors' breach of their fiduciary duties of care and loyalty, the Liquidator, as the representative of TNE and the various employer groups, subscribers and providers, was damaged, and has suffered and continues to suffer, substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT X

(INTENTIONAL MISREPRESENTATION BY TNE)

82. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 81 as if fully set forth herein.

83. The Defendant TNE was at all times engaged in the business of providing health care insurance and medical benefits to employer groups, subscribers and policyholders, and intentionally misrepresented and held itself out to those employer groups, subscribers and policyholders as a financially sound provider of those services and benefits which would be able to perform its contractual obligations.

84. The employer groups, subscribers and policyholders, in whose name the Liquidator now brings this action, reasonably relied to their detriment on the material representations of the Defendant TNE as to its financial condition, the soundness of its financial position, and its ability to perform the services for which it contracted.

85. The Defendant TNE was at all times engaged in the business of developing and operating networks of healthcare providers, and represented and held itself out to its network of healthcare providers as a financially sound provider of health care services and medical benefits.

86. The network providers of health care services and medical benefits, in whose name the Liquidator now brings this action, reasonably relied to their detriment on the material representations of the Defendant TNE as to its financial condition, the soundness of its financial position, and its ability to perform the services for which it contracted.

87. The Defendant TNE owed a duty to be truthful in the process of negotiating, entering into, and performing its contracts and undertakings with employer groups, subscribers, policyholders and network providers.

88. The Defendant breached its duty and intentionally misrepresented its financial condition, the soundness of its financial position, and its ability to perform the services for which it contracted to the aforementioned employer groups, subscribers, policyholders, and network providers of health care services and medical benefits, by without limitation setting premium rates at levels that did not permit TNE to remain a viable business enterprise.

89. The Defendant TNE's intentional misrepresentation was a direct and proximate cause of substantial economic loss, which the Liquidator and the parties in whose name the Liquidator brings this action have suffered and continue to suffer.

COUNT XI

(UNFAIR TRADE PRACTICES BY TAHP AND TAHMO AND THE DIRECTOR DEFENDANTS)

90. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 89 as if fully set forth herein.

91. The Defendants TAHP and TAHMO, as agents of TNE and through the Management and Services Agreements, were, through and with their subsidiary TNE and through their own conduct, engaged in trade and commerce in the State of New Hampshire.

92. The Director Defendants were, through TAHP, TAHMO and TNE and their direction and control of the activities and policies of TNE, including but not limited to their decisions relating to the capital investment and contribution in TNE, engaged in trade and commerce in the State of New Hampshire.

93. The Defendants TAHP and TAHMO and the Director Defendants engaged in and used unfair and deceptive acts and practices violative of R.S.A. 358-A:2 with respect to the business and operations of TNE, including, without limitation, by willfully and knowingly misleading creditors and others with respect to the creditworthiness and capitalization of TNE.

94. The Defendants TAHP and TAHMO and the Director Defendants engaged in and used unfair and deceptive acts and practices violative of R.S.A. 358-A:2 with respect to the business and operations of TNE, including, without limitation, by willfully and knowingly establishing and charging premium rates that would not support the ongoing business of TNE, resulting in a premium deficiency and underwriting and operations losses from which TNE could not recover without the continuing financial support of TAHP and TAHMO, and by failing to cause TNE to establish a premium deficiency reserve.

95. The Defendants TAHP's and TAHMO's and the Director Defendants' use of unfair and deceptive acts and practices was a direct and proximate cause of substantial economic loss, which the Liquidator and the parties in whose name the Liquidator brings this action have suffered and continue to suffer.

96. The Defendants TAHP's and TAHMO's and the Director Defendants' use of unfair and deceptive acts and practices was a willful and knowing violation of R.S.A. 358-A, entitling the Liquidator to an award of trebled damages and the attorney's fees and costs incurred in bringing this action.

COUNT XII

(INTENTIONAL MISREPRESENTATION BY TAHP AND TAHMO)

97. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 95 as if fully set forth herein.

98. The Defendants TAHP and TAHMO were at all times engaged in providing funding for the capitalization and operation of the business of TNE, in order to permit TNE to meet its financial and contractual obligations as a going concern engaged in the business of providing health care insurance and medical benefits to employer groups, subscribers and policyholders.

99. The Defendants TAHP and TAHMO intentionally misrepresented to employer groups, subscribers, policyholders, network providers and others the financial creditworthiness of TNE and its capitalization on an ongoing basis, and thus intentionally misrepresented TNE to be a financially sound provider of those services and benefits which would be able to perform its contractual obligations, when TAHP and TAHMO knew that TNE would only be so with TAHP's and TAHMO's continuing support.

100. The Defendants TAHP and TAHMO intentionally misrepresented to employer groups, subscribers and policyholders, network providers and others that they would, or would cause TAHMO to continue to fund the capitalization and operations of the business of TNE.

101. The employer groups, subscribers and policyholders, providers and others, in whose name the Liquidator now brings this action, reasonably relied to their detriment on the material representations of the Defendants TAHP and

TAHMO as to the financial condition of TNE, its capitalization on an ongoing basis, the soundness of its financial position, its ability to perform the services for which it contracted, and TAHP's and TAHMO's continued promise and commitment to provide funding for the capitalization and operations of the business of TNE.

102. The Defendants TAHP and TAHMO owed a duty to be truthful and accurate in their representations of the creditworthiness, capitalization and financial soundness of TNE, the ability of TNE to perform the services for which TNE contracted with TAHP's and TAHMO's knowledge and consent, and as to their commitment to the financial support of the operations and business of TNE.

103. The Defendants TAHP and TAHMO breached their duty and intentionally misrepresented TNE's creditworthiness, capitalization on an ongoing basis, financial condition, the soundness of TNE's financial position, its ability to perform the services for which it contracted to the aforementioned employer groups, subscribers, policyholders, and network providers of health care services and medical benefits, and their continued commitment to the financial support of the operations and business of TNE, by without limitation representing the soundness of TNE's financial condition when in fact TNE was undercapitalized if TAHP and/or TAHMO did not continue to provide financial support for TNE, and by failing to continue to give financial support for the operations and business of TNE.

104. The Defendants TAHP's and TAHMO's failure to adhere to the duty to be truthful and their intentional misrepresentations was a direct and proximate cause of substantial economic loss, which the Liquidator and the parties in whose name the Liquidator brings this action have suffered and continue to suffer.

COUNT XIII

(NEGLIGENT MISREPRESENTATION BY TAHP AND TAHMO)

105. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 104 as if fully set forth herein.

106. The Defendants TAHP and TAHMO were at all times engaged in providing funding for the capitalization and operations of the business of TNE, in order to permit TNE to meet its financial obligations as a going concern engaged in the business of providing health care insurance and medical benefits to employer groups, subscribers and policyholders.

107. The Defendants TAHP and TAHMO owed a duty to exercise reasonable care in the financing and capitalization of TNE, which they understood was negotiating, entering into, and performing its contracts and undertakings with employer groups, subscribers, policyholders and network providers.

108. The Defendants TAHP and TAHMO breached their duty of reasonable care and negligently misrepresented to employer groups, subscribers and policyholders the financial creditworthiness of TNE and its capitalization on an ongoing basis, and thus negligently misrepresented TNE to be a financially sound provider of those services and benefits which would be able to perform its contractual obligations, when TAHP and TAHMO knew that TNE would only be so with TAHP's and TAHMO's continuing support.

109. The employer groups, subscribers and policyholders, in whose name the Liquidator now brings this action, reasonably relied to their detriment on the

material representations of the Defendants TAHP and TAHMO as to the financial condition of TNE, its capitalization on an ongoing basis, the soundness of its financial position, and its ability to perform the services for which it contracted.

110. The Defendants TAHP and TAHMO owed a duty to be truthful and accurate in their representations of the creditworthiness, capitalization and financial soundness of TNE, and a duty to be truthful with respect to the ongoing ability and willingness of TNE to meet contractual obligations entered into in TNE's name.

111. The Defendants TAHP and TAHMO breached their duty and negligently misrepresented TNE's creditworthiness, capitalization on an ongoing basis, financial condition, the soundness of TNE's financial position, and its ability to perform the services for which it contracted to the aforementioned employer groups, subscribers, policyholders, and network providers of health care services and medical benefits, by without limitation representing TNE's financial condition as sound when in fact TNE was undercapitalized if TAHP and/or TAHMO did not continue to provide financial support for TNE.

112. The Defendants TAHP 's and TAHMO's failure to adhere to the duty of reasonable care and their negligent misrepresentations were a direct and proximate cause of substantial economic loss, which the Liquidator and the parties in whose name the Liquidator brings this action have suffered and continue to suffer.

COUNT XIV

(GROSS NEGLIGENCE BY THE DIRECTOR DEFENDANTS)

113. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 112 as if fully set forth herein.

114. As a result of their oversight, control and direction of the business of TNE, as managers of the businesses of TAHP and TAHMO, the Director Defendants owed a duty to TNE to use reasonable care and to refrain from negligence and gross negligence in the conduct of their duties as Directors of TAHP and TAHMO as those duties affected the business and operations of TNE.

115. The Director Defendants breached their duty of reasonable care owing to TNE and were grossly negligent in the conduct of their activities as Directors of TAHP and TAHMO and in the management of the business of TNE by, without limitation, permitting TNE to be operated without regard for its financial condition, ability to meet its contractual and other obligations on a going forward basis and overall creditworthiness.

116. The Director Defendants' failure to adhere to their duty of reasonable care, and their gross negligence, was a direct and proximate cause of substantial economic loss, which the Liquidator and the parties in whose name the Liquidator brings this action have suffered and continue to suffer.

COUNT XV

**(BREACH OF FIDUCIARY DUTY BY THE DIRECTOR DEFENDANTS;
CORPORATE TRUST FUND DOCTRINE)**

117. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 116 as if fully set forth herein.

118. The Director Defendants, by virtue of their oversight, control and direction of the business of TNE, as managers of the businesses of TAHP and TAHMO, and in view of their actual knowledge of the financial distress of TNE and its probable insolvency, owed TNE and its creditors a fiduciary duty of good faith, care and undivided loyalty.

119. The Director Defendants breached their fiduciary duty of loyalty by, without limitation, requiring that TNE transfer substantial amounts of TNE funds to the Defendants TAHMO and TAHP pursuant to Management and Services Agreements at a time when the Director Defendants had actual knowledge of the financial condition and distress of TNE and its probable insolvency.

120. The Director Defendants breached their fiduciary duty of care by, without limitation, imposing fees and other charges against TNE under the Management and Services Agreements that were in excess of the reasonable value of the services rendered thereunder.

121. The Director Defendants breached their fiduciary duty of care by, without limitation, setting TNE premium rates, or allowing TNE premium rates to be set, at rates too low to meet and support current and expected expenses, claims and liabilities, and by failing to cause TAHP and TAHMO to continue, as promised, to support the operations and business of TNE with necessary capital contributions.

122. As a direct and proximate result of the Director Defendants' breach of their fiduciary duties of care and loyalty, the Liquidator, as the representative of TNE and its creditors, was damaged, and has suffered and continues to suffer,

substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT XVI

(BREACH OF CONTRACTS BY TNE)

123. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 122 as if fully set forth herein.

124. The Defendant TNE entered into numerous contracts with employers, group subscribers and members, in which in exchange for a premium payment, TNE agreed to provide health care and medical benefits to insured persons.

125. The Defendant TNE entered into numerous contracts with providers of medical and health care services under which TNE agreed to pay for the provision, on behalf of its membership and policyholders, health care and medical benefits rendered by the providers to insured persons.

126. The Defendant TNE materially breached and dishonored those contracts when it, and its Board of Directors and parent corporations determined to no longer fund and support the business of TNE, and terminated those contracts for the provision of health care and medical benefits.

127. When the Defendant TNE breached its contractual obligations to provide health care and medical insurance benefits to employers, group subscribers and members, each of the employers, group subscribers and members were forced to seek replacement insurance and benefit coverages,

resulting in an increase in the amount of premium payment owned by the employers, group subscribers and members.

128. When the Defendant TNE failed, it breached its contracts with medical and health care service providers and ceased payment to such providers of medical and health care services, such providers were met with a substantial non-payment of, and shortfall in, amounts owed to them.

129. As a direct and proximate result of the Defendant TNE's breach of such contracts, the Liquidator, as the representative of the various employer groups, subscribers and providers who were parties to such contracts, has been damaged, and has suffered and continues to suffer substantial damages, as set forth above, in an amount that exceeds the minimum jurisdictional limits of this Court.

COUNT XVII

(RESTITUTION FOR UNJUST ENRICHMENT FROM TAHP AND TAHMO)

130. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 129 as if fully set forth herein.

131. TAHP, under the Management Agreement, and TAHMO, under the Services Agreement, imposed fees and other charges against TNE that were in excess of the reasonable value of the services rendered thereunder.

132. TAHP's and TAHMO's imposition of excessive fees and charges occurred as a result of their domination and control of TNE and their ability, thereby, to cause TNE to agree to pay and to actually pay excessive management and services fees, without due regard for the effect such payments would have on TNE's ability to operate as a going concern, all to the detriment of TNE.

133. TNE's payment of excessive fees and charges unjustly enriched TAHP and TAHMO to the extent of the difference between the contract rates, fees and charges imposed and the reasonable value of the services rendered. Accordingly, the Defendants TAHP and TAHMO were unjustly enriched, contrary to equity and good conscience, at the expense of the employers, subscribers, policyholders, creditors and network providers, and received a financial benefit that would be unconscionable to retain.

COUNT XVIII

(ACCOUNTING FROM TAHP, TAHMO, HOLDINGS AND TBA)

134. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 133 as if fully set forth herein.

135. TAHP, under the Management Agreement, and TAHMO, under the Services Agreement, and otherwise, owed a confidential and fiduciary duty to TNE with respect to the business of TNE.

136. TAHP and TAHMO directed and controlled the business and operations of TNE, which reposed its confidence in TAHP and TAHMO and wholly relied on TAHP and TAHMO for management and administrative services. TAHP required TNE to pay it for direct costs for various services based on intercompany allocations made between and among various subsidiary and affiliate organizations. TNE relied on TAHP and TAHMO to make reasonable, appropriate and necessary intercompany allocations for TAHP and TAHMO management, administrative and operational services.

137. Upon information and belief, TAHP and TAHMO made intercompany allocations and other accounting adjustments among TAHP, TAHMO, Holdings, TBA and TNE, such that an accounting of the books and records of Holdings and TBA is required, in equity, to determine the extent to which and manner in which such allocations were made between and among TAHP, TAHMO, Holdings, TBA and TNE, and to determine the extent to which amounts were improperly or

inappropriately diverted from TNE to other members of the “Tufts Health Plan” corporate family.

138. TAHP and TAHMO imposed excessive fees and charges pursuant to the Management and Services Agreements and thereby caused TNE to agree to pay and to actually pay excessive management and services fees, without due regard for the effect such payments would have on TNE’s ability to operate as a going concern, all to the detriment of TNE.

139. The Liquidator, by and on behalf of TNE and the Estate of TNE, hereby requests an accounting of the corporate books and records of the Defendants TAHP and TAHMO in order to ascertain the extent to which intercompany financial allocations to TNE for services rendered by TAHP and TAHMO under the Management and Services Agreements and otherwise were reasonable, appropriate and necessary.

140. The Liquidator, by and on behalf of TNE and the Estate of TNE, hereby requests an accounting of the management and administrative services rendered under the Management and Services Agreements to determine whether TNE’s payments thereunder were excessive and the extent to which the Defendants TAHP and TAHMO were unjustly enriched, contrary to equity and good conscience, at the expense of the employers, subscribers, policyholders, creditors and network providers, and received a financial benefit that would be unconscionable to retain.

COUNT XIX

(PIERCING THE TNE CORPORATE VEIL AGAINST TAHP, TAHMO AND HOLDINGS, THE TNE DIRECTORS AND THE DIRECTOR DEFENDANTS)

141. The Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 140 as if fully set forth herein.

142. The Defendant TNE was so dominated and controlled in virtually every respect by TAHP, TAHMO, their Boards of Directors and Holdings, including all aspects of the setting of corporate policy and finance, that TNE constituted the alter ego or mere instrumentality of TAHP, TAHMO and Holdings, and had no separate mind, identity or will of its own.

143. The Defendants TAHP, TAHMO, Holdings, the TNE Directors and the Director Defendants have, through their domination and control of virtually every aspect of the business of the Defendant TNE, used the corporate form of the Defendant TNE in bad faith, and in a manner that has deliberately misled authorized regulators, creditors, policyholders, network providers and other interested persons as to the extent and sufficiency of TNE's corporate assets, and has otherwise used the corporate form of TNE to promote injustice and fraud.

144. The Defendants' domination and control of the Defendant TNE has proximately caused substantial injury and damages, all exceeding the minimum jurisdictional requirements of the Court. The separate corporate forms of the Defendant TNE should therefore be disregarded, and the Defendants TAHP and TAHMO should answer and be liable for any and all damages, attorney's fees,

administrative costs and other costs occasioned by the foregoing Counts I-XVII and the failure of the Defendant TNE.

THE PLAINTIFF REQUESTS A TRIAL BY JURY

WHEREFORE, the Plaintiff respectfully requests that this Court:

- A. Order an accounting of the books, records and finances of the Defendants TAHP, TAHMO, Holdings and TBA;
- B. Enter judgment for liability and damages in its favor on the foregoing Counts I through XVIII, including trebled damages and attorneys' fees under Count IX ;
- C. Decree under the alter ego and mere instrumentality theories of recovery that the judgment for all such damages be the liability of the Defendants TAHP, TAHMO, Holdings, the TNE Directors and the Director Defendants; and
- D. Grant such other and further relief as the Court deems just.

Respectfully submitted,

**PAULA T. ROGERS,
DULY APPOINTED LIQUIDATOR OF
THE ESTATE OF TUFTS HEALTH
PLAN OF NEW ENGLAND, INC.**

By Her Attorneys,

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and

**SHEEHAN PHINNEY BASS + GREEN,
PROFESSIONAL ASSOCIATION**

Dated: March 30, 2000

Bruce A. Harwood, Esquire
Michael C. Harvell, Esquire
Christopher Cole, Esquire
1000 Elm Street, P.O. Box 3701
Manchester, NH 03105-3701

(603) 627-8223

CERTIFICATION

I hereby certify that on this day a copy of the foregoing was sent by facsimile and mailed, postage prepaid, to all counsel of record in the Main Liquidation Proceeding entitled IN THE MATTER OF THE LIQUIDATION OF TUFTS HEALTH PLAN OF NEW ENGLAND, INC., Docket No. 99-E-410 (Merrimack County Superior Court).

Christopher Cole

EXHIBIT A

“THE TNE DIRECTORS”

Harris A. Berman, M.D.
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